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FILED
AUG 12 1953
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM—1953

No. 253

BUSH TERMINAL BUILDINGS COMPANY,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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COMMISSIONER OF INTERNAL REVENUE,
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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The undersigned, on behalf of the Bush Terminal Buildings Company, prays that a writ of certiorari issue to review a judgment of the United States Court of Appeals for the Second Circuit.

Opinions Below

The opinion of the Court of Appeals (R. 108) is reported in 204 F. (2d) 575. The opinion of the Tax Court (R. 57-74) is reported at 17 T. C. 485.

Jurisdiction

The judgment of the Court of Appeals was entered on May 15, 1953 (R. 114). The jurisdiction of this Court is invoked under Section 1254 of Title 28 of the United States Code.

Questions Presented

I

1. Whether petitioner had taxable income from the purchase of its own bonds in 1941 at prices below the par value thereof.

II

2. Whether the net operating loss carry-over for the years 1939 and 1940, as shown in respondent's deficiency notice for 1941 (R. 4), should be increased by the amount of:

(a) The taxable income attributed to petitioner account of its purchase of its own bonds in 1940 at prices below the par value thereof;

and

(b) The expense incurred in litigation involving solely petitioner's right *as a tenant* to the use and occupancy of a Power House.

Statutes and Regulations Involved

The statutes and regulations involved are set forth in the Appendix, *infra*, pages 1a-5a.

Statement

The facts involved may be summarized as follows:

I

On January 1, 1941, petitioner had outstanding $6,880,000 principal amount of First Mortgage 5% bonds due in 1960 secured by lien upon all the company's real property (R.

7). In 1941 petitioner purchased in the open market, on the New York Stock Exchange, a principal amount of $749,000 of these bonds at a total purchase price of $563,812.50 (R. 7). The unamortized discount on said bonds at the time of their purchase was $26,480.95 (R. 7). The difference between the par value of these bonds and their purchase price, plus unamortized discount, amounted to $158,706.55 (R. 7). This amount petitioner excluded from its gross income in 1941 in accordance with the provisions of Section 22 (b) (9) of the Internal Revenue Code, as amended by the Revenue Act of 1942, and also in accordance with the original provisions of said Section as enacted in 1939.

Petitioner was in Bankruptcy during all of 1940 and 1941, under 77B of the National Bankruptcy Act, and was under the jurisdiction and regulatory power of the United States District Court for the Eastern District of New York (R. 30, 65). Pursuant to the provisions of Section 22 (b) (9) of the Internal Revenue Code as originally enacted in 1939, the United States District Court for the Eastern District of New York, by and through its Chief Judge who had jurisdiction of said Bankruptcy proceeding, CERTIFIED to the Commissioner of Internal Revenue that during all of the years 1940 and 1941 petitioner was in *"an unsound financial condition"* (R. 49, Ex. 7).

Petitioner's operations showed a taxable loss in every year from 1935 to 1939, inclusive,—except in 1937 when it had a small taxable profit of $27,803.20. Its total taxable loss from 1935 to 1939, inclusive, was $1,032,647.05 (7 T. C. 796). And its net taxable loss in 1940 (exclusive of gain from the purchase of its own bonds) amounted to over $400,000 (R. 4 and 7 T. C. 803).

The Court of Appeals affirmed (R. 109-110) the Tax Court's opinion, holding that Section 22 (b) (9), as amended

by the Revenue Act of 1942, was not retroactive to 1941. The Court of Appeals also affirmed (R. 110-111) the Tax Court's opinion that a Federal Court having complete regulatory power and control over a corporation in Bankruptcy, was not a *"Federal agency"* within the meaning of Section 22 (b) (9) prior to its amendment in 1942. Why the term *"any* Federal agency", as used by Congress, does not include a Federal Court, the Court of Appeals does not undertake to say.

Though petitioner was in Bankruptcy in 1941, under 77B of the Bankruptcy Act, and showed operating losses of $1,032,647.05 for the period 1935 to 1939, inclusive (7 T. C. 796), and operating losses of over $400,000 for 1940 (R. 4, and 7 T. C. 803), the Court of Appeal never-the-less concluded that the determination of the Commissioner that petitioner was not *"in an unsound financial condition"* in 1941 was conclusive.

II

The second issue herein, involving the determination of the correct net operating loss to be carried over to 1941, includes in part the same basic issue as set forth above under subdivision I, namely: the taxable status of the gain from petitioner's purchase of its own bonds in 1940 at prices below the par value thereof. The same statutory provisions apply to the bonds purchased in 1940 as apply to those purchased in 1941. The amount of this gain which the Tax Court included in petitioner's taxable income in 1940 was $242,790.36 (7 T. C. 803).

The remaining part of the issue under subdivision II hereof pertains to expenses incurred in 1939 and 1940 in litigation involving petitioner's right *as a tenant* to the *use and occupancy* of a Power House. The amount of these expenses was $48,517.98 (R. 38, 43). No part of these expenses pertained to or involved in any way petitioner's acquisition of a capital asset or petitioner's protection or acquisi-

tion of title to *any* property (R. 27-28). The question of *title* to property is in no way involved in this issue (R. 27-28, 105). The title and complete ownership of the property at all times belonged to the defendant in the suit (R., pp. 27-30). The entire litigation pertained solely to petitioner's right *as a tenant* to the *use and occupancy* of the Power House (R. 28). The Court of Appeals, however, held that such litigation expense was a cost incurred in "defending * * * *title* to property" (R. 112-113), and therefore not deductible from taxable income.

Assignment of Errors

The Court of Appeals erred:

1. In holding that the provisions of Section 22 (b) (9) as amended by the Revenue Act of 1942, were not retroactive to and including 1940 and 1941.

2. In holding that the term "*any* Federal agency *authorized* to exercise regulatory power over such corporation", as used in Section 22 (b) (9) prior to its amendment in 1942, did not include a Federal District Court which was *authorized* and did exercise complete regulatory power over petitioner in 1940 and 1941 when it was in Bankruptcy.

3. In holding that there was no showing of gross error on the part of the Commissioner in his failure to find that petitioner was in an unsound financial condition in 1940 and 1941.

4. In holding that the expenses of litigation involving petitioner's right *as a tenant* to the *use and occupancy* of a Power House were expenses incurred in "defending * * * title to property".

Reasons for Granting the Writ

In reaching its conclusions the Court below made several rulings which create conflict with other decisions and which cause confusion and discrimination in the administration of the revenue laws.

I

Bond Purchase Issue

1. The decision of the Court below (R. 109-110) that the provisions of Section 22 (b) (9) as amended by the Revenue Act of 1942, were not retroactive to and including 1940 and 1941 disregards the express provisions of the statute. The decision is not only in conflict with the statute itself, but it is in conflict with the applicable decisions of this Court and of other Courts of Appeal. See *Smietanka* v. *First Trust and Savings Bank,* 257 U. S. 602, 605-606 (1922); *Iselin* v. *The United States,* 270 U. S. 245, 251 (1926); *Crooks* v. *Harrelson,* 282 U. S. 55, 61 (1930); *Helvering* v. *City Bank Farmers Trust Co.,* 296 U. S. 85 (1935); *Commissioner* v. *Korell,* 339 U. S. 619, 627-628 (1950); *Foley Securities Corporation* v. *Commissioner of Internal Revenue,* 106 F. (2d) 731, 734 (C. A. 8th, 1939); *Commissioner of Internal Revenue* v. *Eulcon J. Gracey,* 159 F. (2d) 324, 325 (C. A. 5th, 1947); *Wodehouse* v. *Commissioner of Internal Revenue,* 166 F. (2d) 986, 992 (C. A. 4th, 1948).

In the instant case the Court of Appeals held that Section 22(b)(9) as amended by the Revenue Act of 1942, was not retroactive *because,* as reasoned by the Court, when Congress added Section 22(b)(10) to the Code in 1942 (*an entirely new Section added to the law in that year*) it specifically provided that this latter Section was to be retroactive to taxable years begining after December

31, 1939. The absence of any such provision with reference to Section 22 (b) (9) as amended was in the opinion of the Court of Appeals conclusive evidence that Congress did not intend Section 22 (b) (9) as amended in 1942 to be retroactive. Such a conclusion makes a nullity of the statute. It avoids all real consideration of the specific provisions of the statute. Section 22(b)(9) was already in the Code when the 1942 Revenue Act was passed, and *before* and *after* its amendment it specifically provided *in the last sentence thereof* that the effective date of its operation was to be from *"the date of the enactment of the Revenue Act of 1939"* (App. 1a-2a). Any further provision in this regard would have been mere redundancy. The statutory provisions should control and not some inference or implication drawn from the enactment of some other Section.

The language used by Congress in Section 22 (b) (9) as amended is deprived of *all* meaning unless the amended Section 22 (b) (9) is construed the way it reads; that is, to be applicable to discharges occurring after the enactment of the Revenue Act of 1939. Plainly, the words used by Congress in the concluding sentence of Section 22 (b) (9), as amended by the Revenue Act of 1942, *in no way limit* its application to only "taxable years *beginning after December 31, 1941.*" To so limit it would materially change the law as written. This neither the Commissioner nor the courts can do. *Iselin* v. *The United States,* 270 U. S. 245, 251 (1926); *Crooks* v. *Harrelson,* 282 U. S. 55, 61 (1930). As stated by this Court in *Crooks* v. *Harrelson, supra,* at page 61:

> "* * * the fact must not be overlooked that we are here concerned with a taxing act, *with regard to which the general rule requiring adherence to the letter applies with peculiar strictness.*" (Italics supplied.)

See also *Helvering* v. *San Joaquin Fruit & Investment Co.*, 297 U. S. 496, 499 (1936); *Helvering* v. *Flaccus Oak Leather Co.*, 313 U. S. 247, 249 (1941); *Crane* v. *Commissioner*, 331 U. S. 1, 6-7 (1947); *Commissioner* v. *Korell*, 339 U. S. 619, 627-628 (1950).

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2. As regards the conclusion of the Court below (R. 110-111) that a Federal Court is not a "Federal agency" within the meaning of Section 22(b)(9) prior to its amendment in 1942, we respectfully submit that such a construction violates the long and well established rules of statutory construction. As stated by this Court in the recent case of *Commissioner* v. *Korell*, 339 U. S. 619, at pages 627-628, the *firmly* established principle of tax law is that *"the ordinary meaning of terms is persuasive of their statutory meaning."*

The Court of Appeals in the instant case says in effect that what Congress *intended* to say when it used the term *"any* Federal agency" was "any Federal agency, *except* the federal judiciary". But that, of course, was not what Congress said. And the language used by Congress is meaningless unless Section 22(b)(9) is construed and applied the way it is written. The Court below would create exceptions to the law where no exceptions exist, and would place restrictions on its application which neither Congress nor the regulations prescribed. To say that the term *"any* Federal agency" does not include the federal judiciary is to disregard the plain meaning of the words used. The Court below gives no reason as to why the term *"any* Federal agency" does not include a Federal District Court. In *Crane* v. *Commissioner*, 331 U. S. 1, at page 6, this Court said:

> "* * * the words of statutes—including revenue acts—*should be interpreted where possible in their* ordinary, everyday senses." (Italics supplied.)

In 1940 and 1941 petitioner was in Bankruptcy under 77B of the National Bankruptcy Act. During all of these years the United States District Court for the Eastern District of New York had exclusive jurisdiction over petitioner and exercised complete regulatory power and control over it (R. 30-31; Ex. 7, p. 49). Not only was the said United States District Court *"authorized"* under the Bankruptcy Act to exercise regulatory power over petitioner, but it was *specifically charged with the duty* to do so. It was *"authorized"* to deal summarily with petitioner's property wherever located. Its authority was "exclusive". *It had complete regulatory power over petitioner.*

In accordance with the provisions of Section 22(b)(9) prior to its amendment in 1942, the above mentioned United States District Court for the Eastern District of New York CERTIFIED to the Commissioner that petitioner was in an *"unsound financial condition"* in 1940 and 1941. This certification was made by the Chief Judge of said Court, who was in charge of all of petitioner's Bankruptcy proceedings (R. 30-31; Ex. 7, p. 49). It is, we submt, legally controlling in this case. It supersedes any determination made by the Commissioner. Under the law, such certification, when made by *any* Federal agency authorized to exercise regulatory power over the corporation, is *conclusively* required to be accepted by the Commissioner. This respondent's own regulations admit (Regulations 103, Sec. 19.22(b)(9)-1(a); Appendix herein, pp. 2a-3a).

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3. For the above stated reasons and in accordance with the above cited authorities, the decision of the Court below on the Bond Purchase Issue presented herein should not be allowed to stand. It is, we submit, clearly in conflict with all the applicable decisions of this Court. It

should be noted in this connection that the Court below does not cite a *single* decision of this Court or of any other Court of Appeals in support of its opinion. The applicable decisions of this Court which are cited above should control. We may not speculate as to what Congress might have contemplated or intended. We must construe and apply the law as it is written. *Sabine Transportation Co.* v. *Commissioner,* 5 Cir. 128 F. (2d) 945, affirmed 318 U. S. 306; *Helvering* v. *Credit Alliance Corporation,* 316 U. S. 107.

II

Net Operating Loss Carry-Over

4. The all important question in this proceeding is the correct determination of petitioner's taxable income for 1941. That is the all inclusive issue involved. But in order to properly determine petitioner's taxable income for 1941, it is mandatory, under Section 272(g) of the Internal Revenue Code, that the Court *"correctly"* determine the amount of petitioner's net operating loss carry-over for the two preceding years, 1939 and 1940. Section 272(g) of the Internal Revenue Code provides:

> "Jurisdiction Over Other Taxable Years.—The Board in *redetermining* a deficiency in respect of any taxable year *shall* consider such facts with relation to the taxes for *other taxable years* as may be necessary *correctly* to redetermine the amount of such deficiency, but in so doing shall have no jurisdiction to determine whether or not the tax for any other taxable year has been overpaid or underpaid." (Italics supplied.)

As the record plainly shows in this case, a correct determination of petitioner's tax liability for 1941 can not be made without first determining the *correct* amount of petitioner's carry-over loss for 1939 and 1940. Where

the record shows that errors of law or fact have been made in the determination of petitioner's taxable income for other years involved in the present determination, then such errors must be corrected before the liability for 1941 can be *"correctly"* determined. It is not the net operating loss *figure in some previous tax year* which is to be taken into account, but the *"net operating loss"* itself, by the express words of the statute.

5. As regards the taxable gain from petitioner's purchase of its own bonds in 1940, the same statutory provisions apply to the 1940 purchases as that discussed above for 1941. The same issue is involved for both years.

6. As regards the expenses of litigation, amounting to $48,517.98 and involving *solely* petitioner's right *as a tenant* to the *use and occupancy* of a Power House, the Court below held that these expenses were expenses incurred in "defending * * * title to property". The Court is *grossly* in error in this regard. No *title* whatsoever was involved in connection with these expenses, and the record clearly shows that to be the fact (R. 27-30, 105). The Court below *in its decision* admits that the expenses were for the purpose of determining petitioner's right *"as a tenant to the use and occupancy* of a power house" (R. 112).

The decision of the Court below regarding such litigation expense is not only contrary to the long established rules of law and of the decisions of this Court and other Courts of Appeal, but it is contrary to its own decisions. See *Levitt & Sons, Inc.* v. *Nunan,* 142 F. (2) 795 (C. A. 2nd, 1944); *Hochschild* v. *Commissioner,* 161 F. (2d) 817, 819 (C. A. 2nd, 1947). As stated by the Court below in *Levitt & Sons, Inc.* v. *Nunan, supra,* at page 798:

> "That such payments to *protect* a business generally are 'ordinary' expenses is abundantly settled by authority *and can no longer be questioned.*" (Italics supplied.)

See also *Kornhauser* v. *United States*, 276 U. S. 145, 153 (1928); *Commissioner* v. *Heininger*, 320 U. S. 467, 471-472 (1943); *Rassenfass* v. *Commissioner*, 158 F. (2d) 764, 766-768 (C. A. 7th, 1946). The litigation expense involved in the instant case was made *solely* to protect and preserve petitioner's business (R. 28-30). It was an ordinary and a very necessary business expense. This lawsuit involved a direct assault upon petitioner's business (R. 28-30). The very existence and survival of its business was at stake. In *Commissioner* v. *Heininger, supra*, this Court said, pages 471-472:

> *"For respondent to employ a lawyer to defend his business from threatened destruction was 'normal'; it was the response ordinarily to be expected.* * * * He was placed in a position in which not only his selling methods *but also the continued existence of his lawful business were threatened with complete destruction.* * * * Therefore he did not voluntarily abandon the business but *defended it by all available legal means.* To say that this course of conduct and the expenses which it involved were extraordinarly or unnecessary would be to ignore the ways of conduct and the forms of speech prevailing in the business world." (Italics supplied.)

The grave error into which the Court below fell was in treating an oil lease or mineral lease, in which under local law the lessee has a title or fee in the property and also a right to remove and dispose of certain portions thereof, as being in the same class or category with a lease of industrial space for commercial use. The two types of leases are distinctly different. In one, the lessee does have a title or fee in the property, but in the other the lessee has no title. All of the cases cited by the Court below in support of its decision pertain solely to oil or mineral leases. They have no application whatsoever to the instant case. Regulation 103, Section 19.24-2 (App. 6a herein) which is cited by the Court below in support of its decision (R. 112) is in

no way applicable here, because there is no issue of capital expenditure or title to property involved.

The decision on this issue is directly in conflict with all the applicable decisions of this Court and the other Courts of Appeal. To let it stand would only cause confusion and discrimination in the administration of the revenue laws. If for no other reason, this issue alone should warrant the review of this case by the Supreme Court.

Wherefore, it is prayed that the writ of certiorari should be granted.

Respectfully submitted,

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August, 1953.

APPENDIX

Statutes and Regulations Involved

Statutes Involved

Section 22 (b) (9) of the Internal Revenue Code, as enacted in 1939, provides that the following items *shall not* be included in gross income and *shall be exempt* from taxation under Chapter 1:

"Sec. 22 (b) (9) **Income from Discharge of Indebtedness.**—In the case of a corporation, the amount of any income of the taxpayer attributable to the discharge, within the taxable year, of any indebtedness of the taxpayer or for which the taxpayer is liable evidenced by a security (as hereinafter in this paragraph defined) if—

(A) *it is established to the satisfaction of the Commissioner, or*

(B) *it is certified to the Commissioner by any Federal agency authorized to make loans on behalf of the United States to such corporation or by any Federal agency authorized to exercise regulatory power over such corporation,*

that at the time of such discharge the taxpayer was in an unsound financial condition, and if the taxpayer makes and files at the time of filing the return, in such manner as the Commissioner, with the approval of the Secretary, by regulations prescribes, its consent to the regulations prescribed under section 113 (b) (3) then in effect. In such case the amount of any income of the taxpayer attributable to any unamortized premium (computed as of the first day of the taxable year in which such discharge occurred) with respect to such indebtedness shall not be included in gross income and the amount of the deduction attributable to any unamortized discount (com-

puted as of the first day of the taxable year in which such discharge occurred) with respect to such indebtedness shall not be allowed as a deduction. As used in this paragraph the term 'security' means any bond, debenture, note, or certificate, or other evidence of indebtedness, issued by any corporation, *in existence on June 1, 1939.* This paragraph shall not apply to any discharge occurring before the date of the enactment of the Revenue Act of 1939, or in a taxable year beginning after December 31, *1942.*" [1945]

The italicized provisions of the above-quoted section were *eliminated by the amendment* made to Section 22 (b) (9) in 1942. The date of applicability of said section was also extended in 1942 from December 31, 1942 to December 31, 1945. Except for these eliminations and extension of the date of its applicability, Section 22 (b) (9) was the same after its amendment in 1942 as it was in 1939. The period of its applicability was in no way changed except that it was *extended* to 1945.

Regulations Involved

The pertinent provisions of the Treasury Regulations applicable to Section 22 (b) (9) of the Internal Revenue Code, as enacted in 1939, are:

"Reg. 103, Sec. 19.22(b)(9)-1. **Income from discharge of indebtedness.**—(*a*) *Taxable years beginning after December 31, 1938, and before January 1, 1942.*—Section 22(b)(9) provides, *with respect to taxable years beginning after December 31, 1938, and before January 1, 1942,* a method whereby a corporation may elect to have excluded from its gross income the amount of income attributable to a discharge, within the taxable year, of its indebtedness or of indebtedness for which it is liable as, for example, in the case of a debt arising from an assumption of liability of another corporation. To be entitled to the benefits of the provisions of [Code]

section 22(b)(9) a corporation must (1) file with its return for the taxable year a consent to the provisions of the regulations in effect at the time of the filing of the return, prescribed under [Code] section 113(b)(3) (see [Reg.] *sections 19.113(b)(3)-1* and *19.113(b)(3)-2*, relating to adjustment of basis), and (2) establish that it was in an unsound financial condition immediately preceding the discharge of the indebtedness.

The existence of an unsound financial condition, for the purposes of [Code] section 22(b)(9), may be established (1) by satisfying the Commissioner of such condition upon a presentation to him of all facts pertinent to the financial condition of the corporation or (2) by having presented to the Commissioner a certification of such condition by any Federal agency (*e. g.*, the Reconstruction Finance Corporation) authorized to make loans to such taxpayer on behalf of the United States, or by any Federal agency (*e. g.*, the Interstate Commerce Commission) authorized to exercise regulatory power over the taxpayer. *Such a certification will be deemed to be conclusive upon the Commissioner.* The certification should accompany the return.

• • •

The pertinent provisions of the Treasury Regulations applicable to Section 22 (b) (9) of the Internal Revenue Code, as amended in 1942, are:

"Reg. 111, Sec. 29.22 (b) (9)-1. **Income from discharge of indebtedness.**—Section 22 (b) (9) provides, *with respect to taxable years beginning after December 31, 1941, and before January 1, 1946*, a method whereby a corporation may elect to have excluded from its gross income the amount of income attributable to a discharge, within the taxable year, of its indebtedness or of indebtedness for which it is liable as, for example, in the case of a debt arising from an assumption of liability of another corporation. To be entitled to the benefits of the pro-

visions of section 22 (b) (9) for such years a corporation must file with its return for the taxable year a consent to the provisions of the regulations, in effect at the time of the filing of the return, prescribed under section 113 (b) (3) (see sections 29.113 (b) (3)-1 and 29.113 (b) (3)-2, relating to adjustment of basis).

• • •

Net Operating Loss Carry-Over

The pertinent provisions of the law pertaining to the computation and deduction of petitioner's net operating loss carry-over for the years 1939 and 1940, are set forth in Sections 272 (g) and 122 of the Internal Revenue Code.

Section 272 (g) of the Code provides:

"(g) *Jurisdiction over Other Taxable Years.*—The Board in redetermining a deficiency in respect of any taxable year shall consider such facts with relation to the taxes for other taxable years as may be necessary correctly to redetermine the amount of such deficiency, but in so doing shall have no jurisdiction to determine whether or not the tax for any other taxable year has been overpaid or underpaid."

The pertinent provisions of Section 122 (applicable to the calendar year 1941, the year involved in this proceeding) are as follows:

"(a) *Definition of Net Operating Loss.*—As used in this section, the term 'net operating loss' means the excess of the deductions allowed by this chapter over the gross income, with the exceptions, additions, and limitations provided in subsection (d).

(b) *Amount of* • • • *Carry-Over.*—

• • •

(2) *Net Operating Loss Carry-Over.*—If for any taxable year the taxpayer has a net operating loss, such net operating loss shall be a net operat-

ing loss carry-over for each of the two succeeding taxable years, except that the carry-over in the case of the second succeeding taxable year shall be the excess, if any, of the amount of such net operating loss over the net income for the intervening taxable year computed (A) with the exceptions, additions, and limitations provided in subsection (d) (1), (2), (4), and (6), and (B) by determining the net operating loss deduction for such intervening taxable year without regard to such net operating loss and without regard to any net operating loss carry-back."

* * *

Litigation Expense

The pertinent provisions of the law pertaining to the expense of litigation involving petitioner's right *as a tenant* to the *use and occupancy* of a Power House, are as follows:

"Sec. 23. *Deductions from Gross Income.*

In computing net income there shall be allowed as deductions:

(a) Expenses.—

(1) Trade or Business Expenses.—

(A) In General.—All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business * * *."

Regulations 103, Sec. 19.24-2

The provisions of Regulation 103, Sec. 19.24-2 as quoted and cited by respondent in the Court below regarding the issue of litigation expense, are as follows:

"Sec. 19.24-2. *Capital expenditures.* * * * The cost of defending or perfecting title to property constitutes a part of the cost of the property and is not a deductible expense. * * * Expenses of the organization of a corporation, such as incorporation fees, attorneys' and accountants' charges, are capital expenditures and not deductible from gross income. * * *"